IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 324 OF 2007

IN

CRIMINAL APPLICATION NO. 546 OF 2006

Mr. Rajesh Menon & Anr. ... Applicants

Versus

State of Maharashtra & Ors. ... Respondents

Mr. A.P.Mundargi i/b. Mahesh Menon & Co. for the Applicants.

Mr. D.P.Adsule, APP, for the State.

CORAM: J.H.BHATIA,J.

DATE : 12th June, 2007.

P.C.

1. Heard Mr. Mundargi, learned Counsel for the Applicants. None for the State. Perused the record.

2. The applicants had filed Criminal Application No. 546 of 2006 against the Respondents and by order dated 12th December, 2006, the applicant was directed to implead the first informant as Respondent No.3 and

amendment was to be carried out within a period of one week. The Court further directed that notice to the newly added Respondent be issued returnable on 7th February, 2007. In addition to the service through Court, the Advocate for the applicant was also directed to serve private notice to the added Respondent and file affidavit of service. As per the order, if compliance was not made before the returnable date, the application would stand dismissed for want of prosecution without further reference to the Court. The record reveals that on 8th January, 2007, the Counsel for the applicants filed an affidavit of Clerk - Vithal Patil to the effect that the notice was sent to the Respondent No.3 by Registered Post A.D. on 19th December,2006 with copy of the amended application, but it was returned with the remark "Unclaimed". Inspite of this affidavit, the Registry found that it was not a proper compliance and the conditional order dated 12th December, 2006 stands which means that the Application would stand dismissed in default for non-compliance of the order.

3. By this Application, the applicants seeks restoration fo the said Application. It is contended that the office endorsement is not correct and is against the record.

4. After going through the record and the affidavit

dated 8th January, 2007, I find that the Counsel for the applicants had complied with the order of the Court by sending a notice and also filing an affidavit well before the stipulated date. If, in such circumstances, the office feels that service is not proper, at the most, the applicants could be asked to issue a fresh notice, but the Application could not be dismissed in default for non-compliance of the order. In my opinion, the order passed by the Registry treating the Application No.546 of 2006 as dismissed in default is not proper.

5. Therefore, this Application is allowed. Criminal Application No.546 of 2006 is restored to file. However, now the applicants shall issue fresh notice to the Respondent No.3 returnable six weeks from this date. Interim order dated 17th February, 2006 shall continue till then.

(J.H.BHATIA,J.)